IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Crl.MC.No. 144 of 2007()

CRMP.89/2007 of JUDL.MAGISTRATE OF FIRST CLASS-III, PUNALUR
CRIME NO.576/2006 OF PATHANAPURAM POLICE STATION.

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PETITIONER:

SAJEENA BEEVI, W/O. SHAJAHAN,
PALLYPADINJATTATHIL, CHEMBANARUVI,
PIRAVANTHOOR P.O., PATHANAPURAM.

BY ADV. SRI.S.RAJEEV
SRI.K.V.VINODKUMAR

RESPONDENTS: COUNTER PETITIONER

STATE, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM. (CRIME NO.576 OF 2006 OF PATHANAPURAM
POLICE STATION).

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. OF 144 2007

Dated this the 17th day of January, 2007

ORDER

The petitioner is the wife of the registered owner of a vehicle – Mahindra jeep bearing registeration No.KL 2-H-8753. That vehicle was allegedly involved in the commission of an offence under the Kerala Abkari Act. The vehicle was seized by the excise officials and was produced before the learned Magistrate. The petitioner applied for release of the vehicle under Sec.451 of the Cr.P.C. The learned Magistrate dismissed the same on the ground that the proceedings under Sec.67(B) of the Abkari Act are liable to be initiated against the petitioner.

2. The learned counsel for the petitioner submits that the rejection of the prayer for interim release of the vehicle under Sec.451 of the Cr.P.C. is not justified at all. The mere fact that the Assistant Excise Commissioner/authorised officer may initiate proceedings under Sec.67(B) of the Abkari Act is by itself no reason not to direct the interim release of the vehicle under Sec.451 of the Cr.P.C. The petitioner shall

undertake to produce the vehicle before the court or the authority under Sec.67(B) of the Abkari Act. But, at any rate, there may not be a direction to retain the vehicle in the custody of the court exposing it to sun and rain and leading eventually its damage and deterioration. The learned counsel for the petitioner relies on the decision in **Sunderbhai Ambalal Desai v. State of Gujarat** (AIR 2003 SC 638) in support of his plea. No serious objection is raised by the learned Public Prosecutor. The learned Public Prosecutor submits that such conditions may be imposed which shall ensure that the vehicle is available before the court or the authority under Sec.67(B) of the Abkari Act as and when required.

3. I am satisfied that the request of the petitioner can be accepted and the vehicle can be directed to be released to the petitioner subject to appropriate conditions.

4. In the result, this Crl.M.C. is allowed. The vehicle shall be released to the petitioner on the following terms and conditions:

(i) The petitioner shall execute a bond undertaking to

make available before the court or the concerned authority under Sec.67(B) of the Abkari Act for such amount equal to the value of the vehicle as may be fixed by the learned Magistrate.

(ii) The petitioner shall produce a bank guarantee for the value of the vehicle before the learned Magistrate.

(iii) The petitioner shall produce before the learned Magistrate the documents to show that she is the wife and her husband is the registered owner of the vehicle.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge